

In the Supreme Court of the State of Alaska

Fred W. Triem,

Appellant,

v.

**Kake Tribal Corporation, Arlene
Hanson, et al.,**

Appellees.

Clifford W. Tagaban,

Appellant,

v.

**Kake Tribal Corporation, Lorraine
Jackson, et al.,**

Appellees.

Supreme Court Nos. **S-17767/S-17846**

Order

Appellants' Motion to Supplement
Statement of Points on Appeal

Date of Order: **5/14/2021**

Trial Court Case Nos. **1PE-90-00072 CI; 1PE-95-00001 CI**

On April 4, 2020 appellants Clifford W. Tagaban and Fred W. Triem filed a notice of appeal from the superior court's February 10, 2020 order denying relief and its March 5, 2020 order denying reconsideration. [Notice of Appeal, S-17767] Later, on August 4, 2020, appellant Clifford W. Tagaban filed a notice of appeal from the superior court's June 30, 2020 order denying relief. [Notice of Appeal, S-17846] We consolidated these two appeals. [Order, 8/19/2020, Nos. S-17767/17846]

Later yet, on August 22, 2020 both appellants filed a notice of appeal from the superior court's August 15, 2020 order sanctioning attorney Fred Triem \$500 in attorney fees paid to Kake Tribal Corporation for filing a frivolous motion. [Notice of Appeal, S-17867] This third appeal was not consolidated with the first two appeals and,

after notice, was dismissed for lack of prosecution. [Order, 1/28/21, S-17867]

After filing their brief in Case Nos. S-17767/17846, appellants filed a motion to supplement their points on appeal in that consolidated matter to match several pages in their brief dedicated to a new argument. [Motion to Supplement, April 2, 2021, S-17767/17846] Appellees opposed the motion, noting that the supplemental appeal point is the same point raised in the appeal dismissed in Case No. S-17867. [Opposition to Motion to Supplement, May 10, 2021, S-17767/17846]

Having considered the foregoing, the motion to supplement appellants' points on appeal in Case Nos. S-17767/17846 to include the appeal of the superior court's August 15, 2020 order for sanctions is **DENIED**. Appellants' discussion of this appeal point in their opening brief shall be **DISREGARDED** by appellees and this court. The appeal point was the subject of Case No. S-17867, which was dismissed for failure to prosecute. The appeal point may not be surreptitiously resurrected in Case Nos. S-17767/17846 simply by briefing the issue, then subsequently and belatedly asking for permission to supplement the points on appeal to include the previously dismissed appeal point. Appellants' failure to advise this court that the proposed appeal point had been raised in a separate appeal that was dismissed for lack of prosecution reflects a lack of candor with this court.

Appellants' assertion that there would be no prejudice if the new appeal point were allowed misses some obvious points. Appellees and the appellate court clerks already expended time and effort responding to the appeal in Case No. S-17867, which ultimately was dismissed because appellants failed to follow the appellate rules and file a brief in a timely fashion. Before Case No. S-17867 was dismissed, appellants could

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have asked to consolidate it with Case Nos. S-17767/17846 so that the appeal point could have been included in the opening brief in Case Nos. S-17767/17846, but appellants did not do so. Now appellees, the appellate court clerks, and an individual justice have been required to spend additional time and effort reviewing files, reconstructing what transpired in Case No. S-17867, and addressing appellants' surreptitious conduct. This is prejudice arising directly from appellants' misconduct and will not be countenanced.

Entered at the direction of an individual justice.

Clerk of the Appellate Courts

A handwritten signature in black ink, appearing to read 'Kaitlin D'Eimon', with a horizontal line extending to the right.

Kaitlin D'Eimon, Deputy Clerk

Distribution:

Mail:

Triem, Fred W.

Email:

Misulich, Robert J.

Heiser, Michael P

Triem, Frederick W

Simpson, Edward B.

Araujo, Todd J.